

Appealed

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
STANLEY H. SCHELL, )  
 )  
Appellant, )  
 )  
v. )  
 )  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )  
 )  
Respondent. )

PCHB No. 77-118

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of an order requiring casing and sealing  
two of appellant's wells, came before the Pollution Control Hearings Board,  
Dave J. Mooney, Chairman, Chris Smith and David Akana (presiding) at  
a formal hearing in Lacey on November 16, 1978.

Appellant was represented by his attorney, Charles A. Kimbrough;  
respondent was represented by Robert E. Mack, Assistant Attorney General.

Appellant's Motion to Remove Board Members Mooney and Smith was  
denied.

Having heard the testimony, having examined the exhibits, and

DA/LB

1 having considered the contentions of the parties, the Board makes  
2 these

3 FINDINGS OF FACT

4 I

5 Appellant possesses a permit, G4-23807P, to appropriate ground  
6 waters from three wells and to apply such waters on certain farmlands  
7 in Douglas County, Washington. The permit, dated August 4, 1975, was  
8 issued subject to conditions, one of which was that:

9 Any well constructed under authority of this permit  
10 shall meet the minimum standards for construction  
11 and maintenance as provided under Chapter 18.104  
12 RCW (Washington Water Well Construction Act of 1971)  
and Chapter 173-160 WAC (Minimum Standards for  
Construction and Maintenance of Water Wells).

13 The regulations referenced require that all wells conform to certain  
14 standards, including a standard for casing of wells.

15 II

16 Based upon observation of wells in the Sagebrush Flats area, including  
17 several of appellant's wells, the department concluded that there was  
18 cascading water in several such wells. Cascading waters, as the term is  
19 used here, are waters which flow from an upper aquifer into a well hole  
20 and fall to a lower level. If such flow were allowed to continue unabated,  
21 the upper aquifer could eventually be drained of its water (dewatered) over  
22 a period of time. In the area of appellant's wells, the upper aquifer  
23 would be affected. Several persons in the area are authorized to take  
24 water from that aquifer for domestic and irrigation uses. The department  
25 further concluded that casing and sealing of the top 300 feet of each well  
26 would prevent such cascading water in the wells of concern authorized u. r

27 FINAL FINDINGS OF FACT,  
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1 the instant permit.

2 III

3 Based upon such information, the department issued an order, DE 77-390  
4 on July 25, 1977 to appellant which required him to case and seal two (one  
5 of which has been drilled) of the three wells which were authorized in the  
6 subject permit. The order required casing and sealing from the ground  
7 surface down to 300 feet. Such order did not set forth "the facts upon  
8 which the conclusion of violating or potential violation is based."  
9 (RCW 43.27A.190) The order was timely appealed to this Board.

10 IV

11 Subsequently, on October 10, 1977, the department rescinded its  
12 previous order dated July 25, 1977 and issued another order setting  
13 forth facts upon which it based its action. The department concluded  
14 that casing and sealing was required for two of appellant's wells in  
15 order to prevent a waste of public ground water. The order also set  
16 forth the statutes (RCW 90.44.110, RCW 43.27A.190) relied upon by the  
17 department. Appellant did not appeal this order.

18 V

19 Any Conclusion of Law which should be deemed a Finding of Fact  
20 is hereby adopted as such.

21 From these Findings the Board comes to these

22 CONCLUSIONS OF LAW

23 I

24 Appellant contends that the first order, dated July 25, 1977,  
25 was procedurally defective in that it (1) did not contain facts  
26 describing the basis for the order; (2) did not set forth the portion

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 of the permit, statutes or regulations said to be violated; and  
2 (3) the respondent had no jurisdiction to enter such an order. Respondent  
3 has jurisdiction to issue the order appealed. RCW 43.27A.190. The  
4 evidence presented at the hearing supports the department's two orders  
5 and the casing requirement has not been shown to be unreasonable. However,  
6 we agree that the first order, dated July 25, 1977, did not comply with the  
7 statutory direction of RCW 43.27A.190 and should, for that reason, be  
8 vacated. Because the department has already vacated it, the matter is  
9 essentially moot.

10 II

11 Any Finding of Fact which should be deemed a Conclusion of Law  
12 is hereby adopted as such.

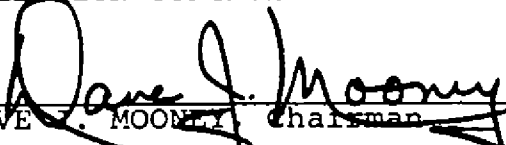
13 From these Conclusions the Board enters this

14 ORDER


15 The Department of Ecology Order dated July 25, 1977 is vacated  
16 and appellant's appeal thereto is dismissed.

17 DATED this 30<sup>TH</sup> day of November, 1978.

18 POLLUTION CONTROL HEARINGS BOARD

19   
20 DAVE J. MOONEY, Chairman

21   
22 CHRIS SMITH, Member

23   
24 DAVID AKANA, Member

25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER